

## **DISCLAIMER**

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## **APPLICATION OF**

**HENRY COUNTY POWER, LLC**

**CASE NO. PUE010300**

**For a certificate of public convenience and  
necessity for electric generation facilities  
in Henry County, Virginia**

## **HEARING EXAMINER'S PROTECTIVE RULING**

**July 16, 2001**

On July 6, 2001, Henry County Power, LLC ("Henry County Power"), by counsel, filed a motion requesting the entry of a Protective Ruling setting forth the procedures by which confidential information, as well as information that may require a higher level of protection from disclosure to competitors, shall be handled generally in this proceeding. Counsel represents that counsel for the Staff does not object to the granting of this motion.

Upon consideration of Henry County Power's request, I am of the opinion, and so find, that protected treatment is warranted for confidential information in this case. Accordingly,

**IT IS DIRECTED** that any documents, materials, and information to be filed with the Commission or produced by any party to the Commission Staff or another party, that the producing party designates and clearly marks as confidential or as containing trade secrets, privileged or confidential commercial or financial information ("confidential information"), shall be filed, produced, examined, and used only in accordance with the conditions set forth below. Information that is available to the public anywhere else will not be granted confidential treatment and shall not be designated as "confidential information" by any party.

(1) Parties shall clearly mark and file under seal with the Commission all information otherwise required to be filed but considered by the party to be confidential information. Parties shall also file with the Commission a redacted version of all documents containing confidential information.

(2) All confidential information filed or produced by a party shall be used solely for the purposes of this proceeding (including any appeals).

(3) Access to confidential information shall be provided and specifically limited to Staff and any party, their counsel and expert witnesses, and to support personnel working on this case under the supervision of said counsel or expert witnesses and to whom it is necessary that the confidential information be shown for the purposes of this proceeding, so long as each such person has executed an Agreement to Adhere to Amended Protective Ruling ("Agreement"), which is Attachment A to this Ruling. Staff and Staff counsel are not required to sign the Agreement but are hereby ordered to preserve the confidentiality of the materials. All Agreements shall be promptly forwarded to the producing party upon execution.

(4) Staff or any party may object to the confidential designation of particular information by filing a motion with the Examiner. The Examiner will conduct an in camera review of the challenged documents, materials, or information. The burden of proving that documents, materials, or information should be designated as confidential shall be upon the proponent of such treatment. In no event shall any party disclose the confidential information it has received subject to this Order absent a finding by the Examiner or the Commission that such information does not require confidential treatment.

(a) Within five (5) business days of the filing of the motion, the party seeking confidential treatment shall file a reply. The reply shall respond to each and every document and all information that is subject to the party's motion. The reply shall: (1) Describe each document and all information, such description to include the character and contents of each document and all information; (2) Explain in detail why the information requires confidential treatment; and (3) Describe and explain in detail all harms that might be suffered as result of the failure of the document to be treated as confidential.

(b) Within ten (10) business days of the filing of the reply, the party objecting to confidential treatment may file a response.

(5) In the event that Staff or any party seeks permission to grant access to any confidential information to any person other than a person authorized to receive such information under paragraph (3) above, the party desiring permission shall obtain the consent of counsel for the producing party. In the event of a negative response, the party seeking disclosure permission may file a motion with the Examiner for such permission and shall bear the burden of proving the necessity for such disclosure.

(6) The producing party shall be under no obligation to furnish confidential information to persons other than those authorized to receive such information under paragraph (3) above unless specifically ordered by the Examiner or the Commission to do so. Parties are encouraged to seek consents to the maximum extent practicable.

(7) The Clerk of the Commission is directed to maintain under seal all documents, materials, and information filed with the Commission in this proceeding that the producing party has designated as confidential information until further order of the Commission.

(8) A producing party is obligated to separate to the fullest extent practicable non-confidential documents, materials, and information from confidential information and to provide the non-confidential documents, materials, and information without restriction.

(9) To the extent that a party contends that it should not produce certain items of information because the terms of this Ruling do not provide sufficient protection to prevent harm to the producing party, the party may file a motion with the Examiner requesting additional protective treatment. The producing party has the burden to demonstrate to the satisfaction of the Commission that this Ruling does not provide the information sufficient protection and that the proposed restrictions are necessary.

(a) The party seeking additional protection shall file all information for which it seeks additional protection under seal with the Commission. The party shall also file with the Commission a redacted version of all documents that contain the confidential information subject to the motion.

(b) The motion shall: (1) Describe each document and all information for which additional protection is sought, such description to include the character and contents of each document and all information; (2) Explain in detail for each document and all information why the confidential treatment afforded under this Ruling is not sufficient to protect the producing party's interests; (3) Describe and explain in detail all harms that might be suffered if the information is not afforded the higher protection; (4) Explain its proposed additional restrictions and why such restrictions are the minimum necessary to protect that party.

(c) Within ten (10) business days of the filing of the motion, Staff and any party may file a reply to the motion.

(d) Within five (5) business days of the filing of any reply, the producing party may file a response.

(10) In the event Staff or any party seeks to introduce at a hearing testimony, exhibits, or studies that disclose confidential information, Staff or the party seeking such introduction shall:

(a) notify the producing party at least three (3) days in advance of any such hearing regarding testimony that is not prefiled unless a shorter period would not unduly prejudice the producing party or is necessitated by the circumstances.

(b) if such testimony is prefiled, file unredacted copies of testimony, exhibits or studies with the Commission under seal, and also file with the Commission redacted copies of all such information, and serve on all parties of record redacted copies of the testimony, exhibits, or studies deleting those parts that contain references to or portions of the designated confidential information. The testimony, exhibits, or studies containing the confidential information filed with the Commission shall be kept under seal unless and until the Commission rules to the contrary. Each party that has signed Attachment A hereof shall receive an unredacted copy of the testimony, exhibits, or studies that contains references to or portions of the confidential information.

(11) Oral testimony regarding confidential information, if ruled admissible by the Examiner, will be taken in camera and that portion of the transcript recording such testimony shall be placed in the record under seal.

(12) No person authorized under this Ruling to have access to confidential information shall disseminate, communicate, or reveal any such confidential information or to any person not

specifically authorized under this Ruling or subsequent order or ruling by the Commission to have access.

(13) At the conclusion of this proceeding (including any appeals), any originals or reproductions of any confidential information produced pursuant to this Ruling shall be returned to the producing party or destroyed if requested to do so by the producing party. At such time, any originals or reproductions of any confidential information in Staff's possession will be returned to the producing party, destroyed or kept with Staff's permanent work papers in a manner that will preserve the confidentiality of the confidential information. Insofar as the provisions of this Ruling restrict the communications and use of the confidential information produced thereunder, such restrictions shall continue to be binding after the conclusion of this proceeding (including any appeals) as to the confidential information.

(14) Any party who obtains confidential information and thereafter misuses it in any way shall be subject to sanctions as the Commission may deem appropriate, in addition to any other liabilities that might attach from such misuse.

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Deborah V. Ellenberg  
Chief Hearing Examiner

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

APPLICATION OF

HENRY COUNTY POWER, LLC

CASE NO. PUE010300

For a certificate of public convenience and  
necessity for electric generation facilities  
in Henry County, Virginia

**AGREEMENT TO ADHERE TO PROTECTIVE RULING**

I, \_\_\_\_\_, on behalf of and representing \_\_\_\_\_,  
hereby acknowledge having read and understood the terms of the Protective Ruling entered in  
this proceeding by the Hearing Examiner on July 16, 2001, and agree to treat all Confidential  
Information that I receive in connection with this Case No. PUE010300 as set forth in that  
Ruling.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

On behalf of: \_\_\_\_\_